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PACIFIC MEDIA WORKERS GUILD

**UNITED STATES OF AMERICA**

**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**REGION 20**

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| PACIFIC MEDIA WORKERS GUILD, LOCAL 39521, TNG-CWA,<br><br>Charging Party,<br><br>v.<br><br>HEARST COMMUNICATIONS, INC. D/B/A THE SAN FRANCISCO CHRONICLE,<br><br>Employer. | Case No. 20-CA-212720<br><br>**CHARGING PARTY'S POST-HEARING BRIEF TO THE ADMINISTRATIVE LAW JUDGE** |

## I. INTRODUCTION

In the midst of contract bargaining, Respondent, Hearst Communications, Inc. d/b/a The San Francisco Chronicle (the "Chronicle") unilaterally imposed a more restrictive Union access policy. The Chronicle promulgated additional restrictions to its Union access policy in response to Union activity and instituted more restrictive access rules than apply to other non-employees upending a decades-long past practice in violation of Sections 8(a)(5) and (1) of the Act.[1]

[1] The Complaint alleges that the promulgation of the new Union access restrictions constitutes an unlawful unilateral change. At hearing, the General Counsel's motion to amend the Complaint was granted to include the allegation that the promulgation of the new Union access restrictions independently violated Section 8(a)(1) of the Act by "implementing a new more restrictive access policy on to the Union due to the Union's activity." (Tr. 62.)

The Chronicle and Pacific Media Workers Guild, Local 39521, TNG-CWA (the "Union" or the "Guild"), have a collective bargaining relationship dating back to the 1930s. For decades, and as long as anyone can remember, the Guild has had unfettered access in the Chronicle's facility, including within the newsroom, to meet with members. After checking in with security, receiving a badge and being escorted to the elevator, there have never been any further restrictions on Union access. Union representatives needed no escort inside the building and Union representatives had no restrictions on where or when they could meet with members. Union representatives routinely met with employees in the newsroom and would walk through the newsroom and speak to multiple employees as needed.

In November and December 2017, as part of a settlement of a different unfair practice charge against the Chronicle, Guild representatives had two scheduled appointments at the Chronicle to review personnel files and copy certain relevant documents. At those meetings, the Chronicle's agents prohibited the Guild representatives from being "unescorted" in the building and ejected them from the newsroom in front of bargaining unit members. The Guild protested these actions to the Chronicle's Vice-President of Human Resources, Renee Peterson, as interfering with their rights to represent their members and a unilateral change in access policy. In response, the Chronicle, through its attorney Mark Batten, issued a December 21, 2017 letter unilaterally announcing new restrictions on Union access. (G.C. Exh. 3.) The letter imposed the following restrictions on Union access as a "clarification" of its policy:

- Prohibition on speaking to unit employees on "company time" and restricting all communication to employees to when they are "on break;"
- Restricting all communication with employees to "non-work settings" (defined as "cafeterias, break rooms, common areas, and lobbies");
- Requiring Guild representatives to "remain" in non-work areas; and
- Requiring Guild representatives to be escorted to non-work areas.

(G.C. Exh. 3.) The Chronicle also falsely asserted that these restrictions applied to all visitors.

The Guild filed the instant unfair practice charge on January 5, 2018, and the Chronicle maintained the December 21, 2017 policy and neither rescinded nor modified it. At hearing, for the very first time, the Chronicle asserted that the December 21, 2017 letter was *not* the Chronicle's

Union access policy. This admission is, essentially, an admission that the promulgation of the December 21, 2017 policy was a unilateral change and constituted unlawful interference. The Chronicle's surprise rescission at hearing does not erase its unfair labor practices and the promulgation and maintenance of an unlawful policy for a crucial seven months during contract bargaining.

This matter came for hearing before Judge Etchingham on July 30, 2018. The Guild submits that the General Counsel has proved that the Chronicle violated sections 8(a)(1) and (5) of the Act by unilaterally promulgating and maintaining a more restrictive and discriminatory Union access policy in response to Union activity. The Union seeks a remedial order of rescission, posting and distribution of a notice of its violation and statement of its remedy, and a reading of that notice to the bargaining unit.

## II. STATEMENT OF FACTS

The Chronicle is a media company that publishes a daily newspaper and online content. (Tr. 24.) The Chronicle employs approximately 400 people and the Guild has represented most of the production employees since the 1930s, including newsroom employees, the editorial department, the advertising department and some business department employees. (Tr. 25; 109.) Currently the Union represents approximately 210 employees at the Chronicle. (Tr. 110.)

The Chronicle and the Guild were parties to a collective bargaining agreement that expired in June 30, 2017. (G.C. 2 & Tr. 26; 110.) The parties have been engaged in successor contract bargaining since May 2017 and remained in negotiations when the alleged unfair practice was committed, complaint issued and up through the hearing on the instant charge. (Tr. 27; 111.)

The Chronicle is headquartered at 901 Mission Street in San Francisco in a three-story building and occupies a portion of the first and third floors, with its newsroom on the third floor. (Tr. 27.) There is a security desk at the main entrance of the building. (Tr. 27.) The newsroom is a large open work area containing approximately 100-120 desks. (Tr. 28-29; 116; 187.) Some desks are separated by low partitions approximately four feet tall. (Tr. 117.) Approximately 30 managers and supervisors have desks in the newsroom and approximately 10-15 managers have offices that overlook the newsroom or the corridor leading to the newsroom. (Tr. 60-61; 116-117; 118; 187.)

Given the nature of the Chronicle's business, reporters do not have set schedules and "come and go as the news and the assignments dictate." (Tr. 112.) Veteran reporter Steve Rubenstein described the job as follows. "[T]he great thing is being a newspaper reporter is every day is different and there really is no set place of work, schedule, where you are, in the field, out in the office, nights, weekends, out of town, it's – every day is a little different." (Tr. 186.) There are no scheduled rest or meal breaks. Breaks are taken "when we can;" "when we're waiting for a phone call or in between deadline additions [sic] or after we filed," or "when there's a lull in the action." (Tr. 112-113; 187; 194.) As there are no scheduled breaks, it can be difficult to schedule meetings and difficult for employees to leave their desks even though they might have downtime while they are waiting for a call or waiting to collaborate. (Tr. 138; 170.) Employees do not clock in and out for breaks. (Tr. 139; 207.) There are no break rooms or cafeterias. Employees often take breaks inside the newsroom at their desk or on the sofas and other common areas within the newsroom. (Tr. 137; 169; 192.)

**A. Union Access at the Chronicle**

There is no written agreement between the parties regarding Union access. (Tr. 35; 110-111.) There is, however, a decades long practice of unfettered and unrestricted Union access to the workplace, including in the newsroom and other work areas. The Union does not disrupt production but, otherwise, talks to employees as needed. Carl Hall is the Executive Officer of the Union and has held that position since 2011. (Tr. 109.) Prior to that, Hall worked for the Chronicle as a reporter from 1987 to 2007. (Tr. 112.) Hall gave uncontroverted testimony based on his personal knowledge describing the practice of the Union representatives' unfettered and unescorted access within the Chronicle from 1987 through December 2017. Hall's testimony was corroborated by the Union's Administrative Officer Kathleen Anderson and reporter Steve Rubenstein who also testified from personal knowledge.

Union representatives, currently Hall and Anderson, visit the Chronicle approximately weekly and more frequently as needed to speak with employees at their work place and in the newsroom. (Tr. 113.) The Union representatives will visit for myriad representational reasons including meeting with members with an issue or concern, investigating a grievance or potential grievance, discussing collective bargaining or getting feedback, and posting communications on the Union's bulleting

boards at the Chronicle. (Tr. 113-114; 152.) Typically, Union representatives will speak to multiple employees within the newsroom when visiting, as it is practical, efficient and convenient for the Union and its members and that happens organically as they see and are seen by other members who have reason to talk to their Union. (Tr. 114-115; 153-154.) The Union representatives move freely throughout the newsroom unescorted. (Tr. 155.) Union representatives typically speak with employees at their desk or close to it, for example, in a corner in the newsroom. (Tr. 114; 153; 206 (essentially, the practice was, Union representatives at the Chronicle would "talk[] to members about Union stuff, quietly").) The Union representatives take precautions not to disrupt operations. (Tr. 115; 154.) These visits and conversations regularly take place in the presence of managers. (Tr. 114; 153; 206.)

In September 2014, the Chronicle unilaterally deactivated the Union representative's badges that had allowed them to enter the building and required Union representatives to check in with security and be escorted "into" the facility (i.e. up the elevator). The Chronicle announced no other change to Union access at that time and none was imposed. Nothing changed regarding the Union representative's interior access once inside the facility. Peterson announced this change to the Union in September 2014 in an email stating only, "When visiting our facility, you will need to check in with security, receive a visitors badge and be escorted by a Chronicle employee *into* the facility." (G.C. Exh. 4 (emphasis added).) Peterson reconfirmed the policy covering Union visitation in an email dated October 1, 2014, stating, ". . . all that a Guild employee need to do to visit the *Chronicle* offices is sign in at the security desk, receive a visitor's badge and have a *Chronicle* employee bring him/her *into* the building. (G.C. Exh. 5 (emphasis added.)) These emails do not restrict Guild representatives to non-work areas, or non-work times, or speaking only to your "escort." They only require an escort "into" the building, not throughout the building. (Tr. 48-49; 51.)

When the Guild received this notice of the badge deactivation, it protested the change and Hall called the Chronicle's in-house counsel Peter Rahbar to register complaint. (Tr. 49.) Rahbar explained that it was not a big change as it was just about checking in at security and that Union representatives can "just call a shop steward, he'll let you in and then you can go talk to whoever you want to without anybody having to know." (Tr. 125.) Rahbar did not impose any restrictions on

where or with whom Union representatives could speak to or make any mention of an "escort." (Tr. 126.)[2]

After September 2014, as promised, nothing changed about the Union's interior access. (Tr. 122.) Hall explained his practice after September 2014.

> I would go to wherever people were working who I needed to see. I mean, generally speaking, the person I went to see was – the first person I went to see was the one who let me in, so it would more or less be up to that person to either meet at their desk or somewhere else. And then, usually on my way out I'd try to be as efficient as possible and talk to whoever else I needed to talk to.

(Tr. 123.) Reporter Steve Rubenstein himself has signed in both Hall and Anderson at security and then observed the representatives go and conduct their business.

> Well, they come up to the newsroom with me because I was going to the newsroom and they were going to the newsroom. I – I – Carl knows his way around the newsroom better than I do, and probably Kat the same. So they certainly don't need my guide services. They knew who they wanted to do – what they wanted to do, who they wanted to see, and they conducted their business without my help.

(Tr. 207.)

Since 2014, Union representatives have continued to talk with bargaining unit members in the newsroom and work areas. (Tr. 123.) Since 2014, Union representatives have continued to move through the workplace without an escort. (Tr. 123.) Hall does not recall ever having an escort within the building at any point before or after 2014. (Tr. 123.)

### B. The Chronicle's Imposition of New Union Access Restrictions and December 21, 2017 Letter

Prior to December 21, 2017, the Chronicle has never told the Union, much less put in writing, that Union representatives were required to be escorted throughout the facility, that they were prohibited from accessing the newsroom, that they were restricted to "non-work" areas and restricted to talking to employees on breaks. (Tr. 51-52; 123-124; 156; 207; 48; 51.)[3]

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[2] The Union filed an unfair practice charge against the Chronicle protesting this unilateral change but the Region dismissed the unfair practice charge based on the Chronicle's representations that the only thing that changed was that Union representatives had to sign in at security, receive a badge and be escorted onto the elevator.

[3] Similarly, there have been no restrictions on other non-employee visitors. "[T]here weren't any restrictions." (Tr. 190.) Visitors have not been restricted to non-work areas; they have always been permitted in the newsroom. (Tr. 190.) Visitors have not been required to be escorted throughout the

In November and December 2017, the Chronicle began restricting the Union's access to its facility. Hall and Anderson visited the Chronicle on November 29, 2017, to review personnel files pursuant to a settlement agreement. (Tr. 127; 157.) The Chronicle had set up the review in the conference room and Human Resources employee Muriel Tabarez oversaw the Union's review. (Tr. 127-128.) After the review, Hall and Anderson went to the newsroom to speak with some members. Anderson spoke to member Michael Cabanatuan and Tabarez approached and told Anderson that she had to leave. (Tr. 158.) Hall spoke to member Karen de Sa and Tabarez came over and told Hall that he had to leave. (Tr. 128.) Hall and Anderson pushed back and Tabarez walked away. However, when Hall returned to his conversation with de Sa she stated, "Am I in trouble now?" and looked uncomfortable talking with Hall. (Tr. 129.)

On December 6, 2017, Hall and Anderson returned to the Chronicle for personnel file review and this time the Chronicle assigned Human Resources manager Sean Kurysh to oversee their review. (Tr. 130.) During the review, Hall and Anderson wanted to have a private conversation and tried to step across the hall, but Kurysh followed them, told them they could not be there and that he "had to keep an eye on [them]." (Tr. 130; 161.) After some discussion, Hall and Anderson went to the lobby to have a private discussion but found Kurysh staring at them and he again said that, "he had to keep his eyes on [them]." (Tr. 131.) After completing reviewing the personnel files, Hall and Anderson went into the newsroom, Hall spoke to members Michael Cabanatuan and Carl Nolte, and Anderson went to speak with members Caroline Grannan and Nanette Asimov. (Tr. 132; 163.) Kurysh confronted Hall in the newsroom in front of the bargaining unit employees and said that Hall and Anderson could not be there and that they had to leave. (Tr. 133.) Hall refused and Kurysh accused Hall of disrupting work and Kurysh was creating a spectacle. (Tr. 133.) Kurysh suggested they go to Peterson's office and Hall and Anderson and a group of employees went to Peterson's office all stating that the Union representatives had a right to be there. (Tr. 134.) Hall told Peterson to read her own 2014 email (which contain no such restrictions) and talk to Rahbar to verify that the Union representatives continued to have the right to be in the newsroom as always. (Tr. 134.) Peterson responded that she would look into it and get back to the Union. (Tr. 134-135; 166.) The Chronicle's

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facility. (Tr. 191.) See, *infra,* Section II.C.

response was the December 21, 2017 letter from Mark Batten. (Tr. 134; G.C. Exh. 3.)

On December 21, 2017, counsel for the Chronicle sent a letter to the Union, cc'ing Peterson and the Chronicle's in-house counsel, stating "I understand that there has been some disagreement recently about your and Kat's access to the Chronicle offices to meet with your members. This letter seeks to clarify the Chronicle's access policy and governing law." (G.C. Exh. 3 & Tr. 30.) The letter went on to impose the following access restrictions:

- ". . . we will not tolerate non-employee union representatives who appear at the workplace and disrupt the working environment by talking with employees who are on company time, performing their duties;"
- "we do not restrict you from communicating with Guild employees while they are on break or in non-work settings;"
- "the policy requires all visitors to sign in with security and be escorted by a member of Human Resources or by an employee to a designated non-work area. Non-work areas include: cafeterias, break rooms, common areas, and lobbies"
- "While in the Chronicle building, Guild representatives must abide by all of the same rules and regulations applicable to other building visitor, including not interfering with the work being performed in the building or the use of the building by other visitors. All visitors must remain in designated non-work areas. If the Guild persists in wandering about the building and initiating conversations with employees who are working, we will ask building security to escort those representatives out of the building . . ."

(G.C. 3 (emphasis in original).) Peterson testified that this letter was written in response to the Union's "wandering" through the newsroom. (Tr. 32; 55.) Peterson explained, "this was sent because Carl and Kat had a – and Kat in particular, had a tendency of coming into the – newsroom and wandering around to various employees without appointments, talking from one person to the next." (Tr. 56.)

The December 21, 2017, letter was the very first time, in 80 years of collective bargaining, that the Chronicle ever notified the Union of, or imposed restrictions on, Union representatives regarding speaking to employees on "work time;" or speaking to employees only in "non-work" areas; and being escorted through the building to non-work areas. (Tr. 111; 126-127; 136; 151; 206; 208 (since Rubenstein started in 1976, the Union has always been allowed in the newsroom to talk to reporters who were not on break).) By this letter, the Chronicle banned the Union from the newsroom for the first time in 80 years. Prior to promulgating these restrictions, the Chronicle did not give the

Union notice or the opportunity to bargain and the parties were in contract negotiations. (Tr. 136-137; 169.)

Since December 17, 2017, the Union has not had access to the newsroom or other work areas at the Chronicle. These restrictions have greatly impeded the Union's communication with and support from its members at this critical time. It has marked the destruction of a Union tradition stretching back to the 1930s of talking to people where they work. (Tr. 139.) The removal of the Union's presence from the newsroom has made it more marginalized and invisible. (Tr. 173.) Rubenstein poignantly captured the importance of having the Union presence at the workplace and in the newsroom.

> Because the Guild is important and knowing what the Guild is up to is important. And knowing my – they're usually there to stick up for us employees, and it's nice to have them around. And – you like it when somebody has your back.

(Tr. 213.)

The impacts are exacerbated because the Union has been subjected to harsher restrictions than other non-employee visitors. It sends a message that the Guild is less welcome than other non-employee visitors "and that their presence there is viewed in a different way that a kid taking a harmonica lesson is. And it shouldn't be." (Tr. 213.) The impacts on employees are observable. Employees have displayed discomfort and been more reluctant to speak with the Union openly and are concerned about surveillance. (Tr. 171; 173.) On a practical level, it has been much more difficult to talk face-to-face with multiple members, to give a bargaining update, stay in communication about bargaining and learn about other pending issues. (Tr. 171; 208.)

At hearing, Peterson testified that the restrictions imposed in the December 17, 2017 letter did not constitute the Chronicle's Union access policy. (Tr. 55.) Despite the written restrictions on access imposed by the letter from the Chronicle's counsel (to which Peterson was cc'd), Peterson testified that the Chronicle's policy did *not* restrict Union representatives to speak only to employees "on break" and in "non-work areas." (Tr. 32; 33; 55.) In other words, Peterson's testimony at hearing was an admission that the December 21, 2017 letter, imposed false and discriminatorily harsh access restrictions on the Union contrary to its policy regarding other visitors. Significantly, the Chronicle

never rescinded the December 21, 2017, letter and never advised either its employees or the Union that these restrictions did not apply. (Tr. 58.) Even after the instant unfair labor practice charge was filed protesting the December 21, 2017 letter, the Chronicle still failed to rescind the letter or advise the Union that it did not apply. (Tr. 58-59.) The Chronicle said not one word to walk back the restrictions until the hearing.

Peterson testified at hearing that the Chronicle's policy was simply that all visitors (including the Union) need to be escorted throughout the building. (Tr. 31-33.)[4] At hearing was the first time that the Union heard this alleged policy. There is no such written policy and it is conceded that it has never once been communicated in writing to the Union. (Tr. 52.) Notably, Peterson could not identify when this alleged Union access policy requiring an escort throughout the building was created and failed to identify who created it, how it was communicated to the Union, or even provide any explanation of how she learned of the policy. Indeed, Peterson admitted that she was unsure of what the policy had been prior to 2014 when she started working for the Chronicle. (Tr. 46; 47-48; 52.)

It is undisputed that Peterson had knowledge of the Union's continued practice of being unescorted in the facility up through 2017. Peterson was aware that Union representatives were unescorted in the newsroom after 2014 and she "assum[es]" they did so prior to 2014. (Tr. 42; 52-53.) In fact, Hall would sometimes "pop in" to Peterson's office without an appointment or escort. (Tr. 84; 124.) Similarly, there were times when Anderson called Peterson to escort her into the building but then Peterson would not escort Anderson once they reached the third floor. (Tr. 156.) On these occasions, Peterson neither asserted an escort policy or advised the Union that it was in violation of it. (Tr. 43; 53.)

Peterson testified vaguely that she spoke to Carl Hall several times between 2014 and 2016 about the fact that Anderson had violated the Chronicle's access policy and that this included not having an escort. (Tr. 66.)[5] Hall and Anderson plainly contradicted Peterson's claim. Peterson never

[4] Peterson first described a policy as prohibiting going from one employee to another or talking with multiple employees. (Tr. 56-57.) Peterson later testified that there is no restriction on the Union from interacting with multiple employees or moving from one employee to another. (Tr. 83 ("No. That becomes their new escort.")

[5] Peterson could not recall any dates of the conversations or specific statements. (Tr. 79.)

informed them verbally of any requirement that they be escorted at all times throughout the building. (Tr. 151; 124; 127.) Any such conversations involved only complaints about Anderson's failure to sign in at security or her "attitude." The only specific incident on the record confirms the failure of the Chronicle to present any actual cognizable evidence that it ever informed the Union of an alleged escort policy prior to December 17, 2017. On November 17, 2016, Anderson had not received a visitor badge because she had entered with a member through the side café entrance and simply nodded to the security guard on the way up. (Tr. 97; 179.) Former Human Resources Business Partner Ashley Loomis testified that she and the publisher "explained to Kat that she was out of procedure. She did not have a visitor's badge." (Tr. 98.) Loomis and the publisher then questioned Anderson about the purpose of her visit and Anderson refused to say. (Tr. 98-99.) According to Loomis, after she and the publisher told Anderson to go down to security, Anderson refused and "got loud" and "quote[d] case law." (Tr. 99-100.) Loomis testified that, "At that point, we just cut her off and said look, these are the rules and we're going to call security." (Tr. 100.) It is undisputed that neither Loomis nor the publisher told Anderson that she could only speak to employees in non-work areas or when employees were on break or that she had to be escorted throughout the building. (Tr. 182-183.) Later Peterson and Hall discussed the incident and Peterson reinforced that the issue was Anderson's failure to sign in with the security guard and that Anderson's demeanor was "argumentative." (Tr. 144.) Peterson did not state that Union representatives could only speak to employees on breaks, in non-work areas or that they had to be escorted at all times. (Tr. 147.) This incident simply confirms the absence of any "escort policy" or ban on Union access to the newsroom in 2016.

**C. Other Non-Employee Visitors**

Peterson testified that the Chronicle has a policy requiring all visitors to be "escorted" at all times throughout the facility. (Tr. 33.) However, she admits that the Chronicle has never notified its employees in writing of any such rule and provided no evidence that it notified employees of any such policy in any way whatsoever. (Tr. 54.)[6] Peterson testified without evidence or any factual basis

[6] The Chronicle's other witness, former Human Resources Manager Ashley Loomis, who worked for the Company for less than two years beginning in August 2016, testified that the Chronicle's access

that all non-employee visitors follow this policy. (Tr. 67.) Peterson's testimony was roundly contradicted by Steve Rubenstein who has been a reporter at the Chronicle since 1976 and has never heard of any of these restrictions. (Tr. 192; 195; 210.) He explained that prior to the December 21, 2017, letter, "there weren't any restrictions" on visitors. In fact, the Chronicle and its employees are 'proud of the place" and "like showing it off." (Tr. 190; 192.) Rubenstein explained the practice as its always been, "You used your common sense and it was a place of work, and people would chat with as they saw fit." (Tr. 190.)

Both Hall and Rubenstein gave many specific examples of non-employee visitors being unescorted. Hall has observed non-employees in the newsroom on numerous occasions who have "wandered" through without an escort. For example, in November 2016, Hall was a professor at UC Berkeley journalism school and brought a group of students to the Chronicle who moved through the newsroom and introduced themselves to reporters that they admired without any issue. (Tr. 140; 141.) Hall and Rubenstein have observed former employees visiting the newsroom and wandering through talking to various former colleagues. (Tr. 141; 200-201.)

Rubenstein recalled various instances when even management has brought in non-employee visitors who were free to roam unescorted and be in the newsroom. Rubenstein gave the editor-in-chief's son a harmonica lesson at one point. (Tr. 195.) Rubenstein himself has brought in visitors to the newsroom many times including family, friends and students. (Tr. 196.) Rubenstein's has conducted his last San Francisco State University journalism class of the semester at the Chronicle and his students would speak to journalists in the newsroom. (Tr. 197.) Rubenstein encouraged his visitors, including friends and students, to walk around the newsroom, listen to reporters, and observe how they ask questions. "I would frequently turn my students more or less, on their – loose to observe colleagues of mine in the newsroom." (Tr. 199.) His visitors would often speak to employees in the newsroom. (Tr. 199; 200.) Rubentstein's visitors have been in the presence of managers and he

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policy for all visitors was that you signed in at the security desk and were escorted at all times by a Chronicle employee. (Tr. 102.) When asked who informed her of this policy, she testified, "I believe it was in our [employee] handbook" but could not identify a section. (Tr. 102.) There is no such policy in the employee handbook. (Tr. 52; 33; 194.) Of course, the Chronicle did not put into evidence the employee handbook or any documentation of any generally applicable written visitor access policy that required visitors to be escorted at all times.

has never been advised that his visitors cannot be in the newsroom, can only be in non-work areas, only speak to employees "on break," or had to be escorted at all times. (Tr. 197; 199; 200.) Rubenstein has observed the same pattern with other colleagues; it is common practice. (Tr. 201-202.) Indeed, visitors will sometimes sell products, like girl scout cookies, in the newsroom. (Tr. 203.)

While the December 17, 2017, letter purported to restrict *all* non-employee visitor access, the Chronicle did not distribute it to employees, only to the Union, and has not enforced it against employees. (Tr. 210.) Since December 17, 2017, Rubenstein has continued to bring non-employee visitors to the newsroom during this period without escorting them the entire time. (Tr. 210-211.) He has observed his family and friends speaking with coworkers without an escort. No one from management has talked to him or advised him that he is or has violated any visitor policy. (Tr. 211-212.)

## III. ARGUMENT

### A. The Chronicle Unilaterally Changed Its Union Access Policy In Violation of Section 8(a)(5) of the Act

A fundamental purpose of the Act, set forth in Section 1, is to "encourage[e] the practice and procedure of collective bargaining . . . for the purpose of negotiating the terms and conditions of . . . employment." Thus, Section 8(d) of the Act imposes an obligation on parties in a collective-bargaining relationship to bargain collectively and in good faith with respect to wages, hours, and other terms and conditions of employment for represented employees. As observed in *Fibreboard Paper Products Corp. v. NLRB*, 322 F.2d 411, 414 (D.C. Cir. 1963), *affd.* 379 U.S. 203, Congress "of necessity framed in the broadest terms possible" the scope of the statutory duty to bargain."

The employer's bargaining obligation is enforced through Section 8(a)(5) of the Act, which prohibits an employer from refusing to bargain or from bargaining in bad faith with its employees' designated representative. Section 8(a)(5) further prohibits an employer's unilateral changes to mandatory subjects of bargaining unless the employer has bargained to impasse with the union representing the employer's employees. *Lawrence Livermore National Security, LLC*, 357 NLRB No. 23, at *3 (2011). Thus, the unilateral change by an employer of a mandatory subject of bargaining is a

*per se* violation of the Act. *NLRB v. Katz*, 369 U.S. 736, 747 (1962); *see also Litton Financial Printing Div. v. NLRB*, 501 U.S. 190, 198 (1991) ("an employer commits an unfair labor practice if, without bargaining to impasse, it effects a unilateral change of an existing term or condition of employment").

Each of the elements of an unlawful unilateral change is present here and the Chronicle has violated Section 8(a)(5) of the Act by unilaterally imposing restrictions on Union access.

1. Union Access Is a Mandatory Subject of Bargaining

The law is clear. Union access to an employer's facility is a mandatory subject of bargaining. *Frontier Hotel & Casino*, 323 NLRB 815, 817 (1997) ("since access by representatives of an incumbent union for representational purposes is a mandatory subject of bargaining [t]he Act requires that, instead of implementing its own solution to perceived abuse, the Respondent bargain with the Union over possible solution to an problems with access"); *see also Ernst Home Centers*, 308 NLRB 848, 849 (1992); *Park Manor Nursing Home, Inc.*, 318 NLRB 1085 (1995); *Unbelievable, Inc*., 323 N.L.R.B. 815, 817 (1997).

2. The December 21, 2017 Letter Constituted an Unlawful Unilateral Material Change

The December 21, 2017 letter imposed several new restrictions on Union access. It prohibited Union representatives from accessing "work areas" including the newsroom; it required employees to be off-the-clock and on break while speaking to a Union representative; and it required Union representatives to be escorted through the facility to non-work areas.

*a. There Is a Longstanding Past Practice of Unfettered Union Access to the Workplace*

An employer's regular and longstanding practices that are neither random nor intermittent become terms and conditions of employment even if those practices are not required by a collective-bargaining agreement. *Garden Grove Hospital & Medical Center*, 357 NLRB No. 63, at *1 fn. 4, 5 (2011).

It is uncontroverted that there is a decades long uninterrupted past practice of unfettered Union access to the newsroom and other work areas at the Chronicle to meet with employees at any time. Hall, Anderson and Rubenstein all testified from personal knowledge to this regular decades-

long practice of Union access to the newsroom and other work areas at any time. Hall and Anderson have personally and openly engaged in this practice since becoming Union representatives and Hall and Rubenstein have observed it since the 1980's and 1970's respectively. Since as long as anyone can remember, Union representatives have regularly accessed employees at their workplace, including the newsroom, to meet with one or more employees regarding workplace issues and collective bargaining. There has never been any requirement that the employees speaking to the Union (or any other visitor) clock out or be on break as employees do not clock out at the Chronicle and breaks are taken at unpredictable times when there is a lull. Employees have never done so. The Chronicle did not dispute any of these facts at hearing and presented no countervailing evidence. The Chronicle's witnesses, Peterson and Loomis, were aware of this regular Union access to the facility and the newsroom. The Chronicle has conceded the existing past practice of Union representative access to the newsroom and other work areas to speak with employees without appointment and as needed without employees clocking out. Thus, this long-standing practice is established.

*b. There Is a Long-standing Past Practice of Union Access in the Workplace Without an Escort*

The record evidence conclusively establishes a decades-long practice of escort-less Union access within the newsroom and facility. Hall, Anderson and Rubenstein all testified to this practice from personal knowledge and with specific credible testimony and examples. Peterson herself admitted to observing (and taking no action in response) to Hall and Anderson accessing the newsroom and her office without an escort on various occasions.

The Chronicle's witnesses claim that it promulgated at some unspecified date in some unspecified manner a policy requiring Union representatives to be "escorted" the entire time that they are in the facility.[7] The Chronicle presented no documentation that such a policy exists and concedes that it has never communicated such a policy to the Union in writing. The testimony of the two Chronicle witnesses who testified to the existence of the policy can be given no weight as it lacks any factual basis and does not withstand scrutiny.

Loomis, who was only a Chronicle employee for less than two years, testified that she learned

[7] This testimony describing the access policy is not consistent with the December 17, 2017 letter.

about this policy restriction from the employee handbook but the employee handbook does not contain the restriction as, Peterson, the Chronicle's other witness admitted. (Tr. 102; 194.) Loomis gave no other basis for her knowledge of the policy and provided no evidence that it was ever communicated to the Union.

Peterson's testimony is no better as she simply failed to identify any source of knowledge of the policy. Peterson could not identify when it was created or by whom. Peterson began working for the Chronicle in 2014, does not know what the policy regarding Union access was before 2014 and "assumed" that the Union representatives went around unescorted. Peterson provided no explanation or foundation for how she learned that the Chronicle required Union representatives to be escorted at all times. Importantly, the Chronicle presented no evidence establishing when, how, or by whom this alleged policy was communicated to the Union.

Notably, Peterson's testimony is not credible in general[8] and particularly incredible regarding the content of this "policy" which was vague and shifting. Peterson first described the Union as in violation of the access policy because Anderson was "talking from one person to the next" where no meeting had been pre-scheduled. (Tr. 56-57.) However, even Peterson has never claimed that the

[8] A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Relco Locomotives, Inc.*, 358 NLRB No. 37, slip op. at 12 (2012), *enfd.* 734 F.3d 764 (8th Cir. 2013). Peterson is not a credible witness. She provided shifting and unclear explanations of the Union access policy and could not identify any basic facts about it, including when it was promulgated, by whom and how. Peterson testified incredibly that all visitors were required to be escorted without identifying how or when that rule was promulgated to employees or enforced. Peterson failed to respond at all to the scads of evidence that for decades and both before and after the December 17, 2017 letter, employees including management (such as the editor-in-chief) have invited visitors to be in the newsroom and "wander" and speak to various other employees or even sell girl scout cookies. Most disturbingly, Peterson testified that the December 17, 2017, letter that the Chronicle sent the Union, in response to Union activity and during bargaining, setting new restrictions on its access policy contained restrictions that were contrary to the Chronicle's policy (i.e. restricting access to non-work areas when employees were on break). The Union then filed an unfair labor practice charge against the Chronicle alleging that it had unilaterally changed its access policy because of the December 17, 2017 promulgation but the Chronicle did not rescind the letter. Peterson offered no explanation of why the Chronicle sent the Union a letter imposing a discriminatory more restrictive and inaccurate access policy and why it failed to rescind it. In other words, Peterson's entire testimony that the Chronicle had and enforced a generally applicable escort requirement is obviously a lie.

Chronicle had a policy that restricted Union access to a limited number of employees or required all interactions to be pre-scheduled (and obviously, the Chronicle presented no evidence of any such policy). Peterson later backtracked and admitted that there was no restriction on the number of people that a Union representative could talk to and that the Union representative could move from person to person because the new person could become their new "escort." (Tr. 83.) These two explanations of the policy cannot be reconciled with each other. Even at hearing, Peterson did not cogently explain the content of the "escort" policy or when and how it was communicated to the Union. The Chronicle's argument that an escort policy was clearly promulgated to the Union outside of the 10(b) period is ludicrous.

Peterson's claim that the Chronicle has policy requiring an escort at all times is belied by the Chronicle's own prior statements. In 2014, when the Chronicle deactivated the Union's badges, it asserted that there were no changes in access except to the procedure for entering the facility. Peterson put in writing twice that the only changes regarding Union access were the requirement to sign in at security and be escorted *into* the building. (G.C. Exhs. 3 & 5.) This is the very first time that the concept of an "escort" has ever existed in the history of the bargaining relationship and Peterson explained in writing that the requirement was limited to getting "into" the facility. Had the Chronicle imposed or maintained a requirement that the representatives be escorted throughout the facility, then it would not have used the word "into the building" to describe the escort. Similarly, Rahbar assured Hall that the only restriction was getting into the building and specifically stated the opposite: that the shop steward could escort them and then they could go off and speak to whomever. Indeed, it has never been so enforced until December 2017.

Most importantly, Peterson's claimed existence of a policy requiring an escort throughout the facility is belied by the uncontroverted evidence of the consistent practice (of both Union representatives and other visitors) over decades of moving through the facility without an escort. Hall and Anderson have never used an escort throughout the facility. Peterson herself has undisputed knowledge of this practice. She admits that she assumes that this is how it was done in the past and does not controvert the overwhelming evidence of the past practice. The uncontroverted evidence establishes Peterson's knowledge of the continued practice after 2014. Peterson let Anderson up in

the elevator as her escort into the building before leaving her in the newsroom unescorted. Peterson admits that she has seen Hall moving from member to member in the newsroom. Hall has come to Peterson's office to discuss issues after meeting with members without an escort.

Further undercutting the claim is that both of the Chronicle's witnesses claimed that this "escort" requirement was a policy of general applicability to all visitors. This claim is false. If the Chronicle has such a generally applicable policy, it presented no evidence that it either communicated it to its employees or enforced it. The Chronicle did not rebut the testimony of Rubenstein who has worked for the Chronicle as a reporter since the 1970s and has never been told that he is required to escort all visitors at all times. He and his colleagues have been hosting visitors -- friends, family, former colleagues and students – without any such escort requirement. His visitors use the bathroom, talk to other reporters and employees, wander about, and observe as they have done for decades. This takes place in the open in front of management.[9]

In sum, the past practice of Union access without an escort is clear.

*c. The December 21, 2017, Letter Unilaterally Changed the Status Quo*

As described above, the December 17, 2017, letter imposed three restrictions on Union access. It required Union representatives to remain in non-work areas and excluded them from the newsroom; it required that employees be "on break" to speak to Union representatives and required that Union representatives be escorted throughout the facility to non-work areas. The Chronicle's

[9] In the face of this mountain of evidence of a past practice of having no escort requirement is the testimony of Peterson that she spoke to Hall on several unspecified occasions regarding Anderson's violating the access policy. Peterson did not identify any specific occasion where she told Hall that the Chronicle's policy was that Union representative had to be escorted throughout the facility. Peterson's claims that she did so are not believable. First, the Union would have challenged any such claim. Second, it is not believable that Peterson would not have put that requirement in writing particularly where she had twice previously put in writing a contradictory procedure regarding union access and the past practice so clearly conflicted with the claimed policy. Further, there was a single incident involving Anderson that was actually described in any detail and neither Chronicle witness testified that they told Hall or Anderson that there had been a violation of the requirement to be escorted throughout the facility. Loomis testified that she had raised to Kat the failure to check in at security and get a badge and her bad attitude. Peterson was not present for the incident but when Hall spoke to her afterwards it was about the security desk issue.

Even if Peterson's testimony were completely credited, this would not establish a sufficiently clear announcement of a policy change such that it would waive the right to bargain with the Union. Again, in the single incident in which there is testimony the Chronicle's statements, at best, identified problems with Anderson's attitude or failure to sign in at security. The Chronicle never announced a generally applicable policy and continued to allow Hall and Anderson to be unescorted in the facility.

unilateral imposition of restrictions on Union access is material. "Any change that actually interferes with contractually agreed employee access to the unit collective-bargaining representatives for representational purposes is a material change." *Frontier Hotel & Casino*, 323 NLRB 815, 818 (1997). In this case, the Chronicle actually kicked Union representatives out of the newsroom in December 2017 and then imposed the explicit restrictions on access. The Chronicle actually did interfere with the parties' longstanding past practice of unfettered Union access to employees at the workplace and, thus, is an unlawful material change. *Cf. Oaktree Capital Management*, 355 NLRB 1272 (2010) (revoking past practice of providing parking validation for Union representatives an unlawful unilateral change). The Chronicle's unilateral changes have impaired the Union's ability to represent employees and have impaired employees' ability to effectively support the Union. For seven months during successor negotiations, the Union has not had access to employees in the newsroom in a sharp departure from the parties' decades-long practice.

Peterson's apparent disavowal at hearing seven months after imposition of the prohibition on Union access to the newsroom and other work areas and to the speaking to employees on work time does not negate the unilateral change. The December 17, 2017 letter imposed three new restrictions on Union access. The Chronicle maintained those three new restrictions even after the unfair practice charge was filed and the Complaint issued. The disavowal seven months later of certain restrictions does not erase the unilateral change or remedy the unfair labor practice. The Chronicle's full complement of unilateral changes was implemented for seven months and the seven months comprised bargaining for a successor collective bargaining agreement: a time when Union access to the workplace for communication was particularly important and the diminishment of the Union's presence and stature particularly harmful. Indeed, even a one-time unilateral change to the access policy can be material. *See Frontier Hotel & Casino*, 323 NLRB at 818 (finding that the employer violated Section 8(a)(5) and (1) when it denied union representatives access to its facility on one occasion because they refused to sign a document acknowledging the employer's new union access policy); *see also SMI/Division of Dcx-Chol Enterprises, Inc.*, 2014 WL 4734640 (Sept. 23, 2014) (holding that the employer's denial of union access to the break room on *one* occasion to meet with employees after a grievance meeting was an unlawful unilateral change despite the fact that

subsequently the union was permitted to access the breakroom).

*d. The Change Is Material*

The Chronicle may argue that the change is not material because there is still some access to the employees. This argument ignores and devalues the significance of the presence of the Union in the newsroom and the realities of the industry that make meeting people at their worksite important.

Union access in the workplace is significant generally and particularly in this workplace. Unfettered Union access within the workplace demonstrates the power and availability of the Union and, as Rubenstein describes, shows employees that the Union has their back. It also allows employees to raise concerns to the Union or receive information from the Union without any barriers. Employees can flag a representative or respond to a representative's inquiry without having to pre-schedule a meeting or use work or break time to travel somewhere to meet with the Union representative. Moreover, the workplace is routinely accessed by other non-employee visitors without being escorted throughout the building. Thus, to impose this restriction on Union representatives sends a clear message that they have less right to be there than other non-employee guests and are less trustworthy. The Chronicle's chilling message and diminishment of the Union cannot be overstated given the erasure of a decades-long signature Union practice.

It is significant that this change was imposed in response to Union activity, came after the physical and public removal of the Union representatives from the newsroom, was imposed during successor bargaining and promulgated and enforced discriminatorily. The Chronicle's independent 8(a)(1) violations undercut any claim it may further that the changes were immaterial. The Chronicle's actions tend to chill employees' exercise of protected concerted activity and, therefore, the changes are material.

In this particular workplace, the restrictions imposed on Union access are particularly significant. There are no set break times and schedules are in flux daily due to the nature of the work. If the Union wants to give an update on bargaining, address the myriad pending issues, or solicit new ones, it is important to be able to walk the floor of the Chronicle and check in with employees. Reporters, for example, may have downtime but may need to be at or near their desks.

Additionally, the Chronicle does not have any break rooms or cafeterias. The space where

employees "take breaks" is actually in designated work areas. The requirement that employees be "off the clock" does not make any sense as employees do not clock in and out for breaks and it is treating a meeting or conversation with a Union representative differently than a meeting or conversation with any other non-employee such as making a personal phone call or talking with a family member, friend or former colleague. The argument by Peterson that the Union can request conference room space transfers the control over the meetings from the workers to the Chronicle. The Chronicle has the power to deny the request (as it has done in the past) and the requests must be pre-arranged and the availability will be determined around the Chronicle's business needs. It removes employees from their work location where they might prefer to remain for work purposes and makes meeting with the Union more cumbersome. This requirement of obtaining prior permission to speak with employees is a material unilateral change. *See New York Telephone Co.*, 304 NLRB 183 (1991) (unlawful unilateral change where employer imposed requirement of prior permission for union meetings in the employee lounge); *Miron & Sons, Inc.*, 358 NLRB No. 78 (2012).

The Chronicle may cite to *Peerless Food Products*, 236 NLRB 161 (1978), but that case is readily distinguishable. In *Peerless*, the Board held that an employer's unilaterally imposed limitation on the union's access to the production area in a packing plant was not material because the employer had limited access to only persons whose presence in production was necessary and the union was provided access to the facilities at the set break and lunch times to consult with employees and access to the production area as needed. *Peerless* is readily distinguishable. The Chronicle's workplace, unlike the production area of the packing plant, is open to visitors. The Chronicle employees, unlike the employees in *Peerless*, do not have set breaks, lunches and employees' schedules are unpredictable on a daily basis, and the Chronicle does not have designated non-work areas for taking breaks and lunches.

This case is more similar to *Ernst Home Centers, Inc.*, 308 NLRB 848 (1992). In *Ernst Home Centers*, the Board held that the employer made an unlawful unilateral change by prohibiting union representatives from having limited conversations with employees on the sales floor of the stores. The Board distinguished *Peerless* on similar facts present here. The *Ernst* Board noted that the access in *Ernst* was to a sales floor of a store not a production area of a packing plant and that employees in

*Peerless* had uniform break and lunchtimes when the employees were accessible to the Union, whereas in *Ernst*, there was no evidence of uniform breaktime or lunchtime when all employees could be accessible. Likewise, the Chronicle employees do not have uniform break or lunch times and, even more compellingly, do not have non-work break areas. Moreover, sometimes the Chronicle employees do not take any breaks away from work areas but simply must eat at their desks or at the sofas in the newsroom. Without access to the newsroom, the Union representatives lose the ability to communicate with each employee at work and inquire as to whether the employees have matters to discuss with the representative. *Ernst Home Centers, Inc.*, 308 NLRB at 849.

The Chronicle may also try to argue that, going forward, the policy change only involves the requirement of an "escort," which is immaterial. The analysis of that change cannot be divorced from the context in which it was promulgated, along with other material changes to restrict Union access in response to Union activity and during contract bargaining. Further, the imposition of the requirement that Union representatives be escorted throughout the facility does impede Union access by changing a past practice and imposing restrictions on the Union representatives movement in the newsroom that did not previously exist and do not apply to other non-employee visitors. Being singled out for Union activity and subjecting one's movements to heightened surveillance in contrast to meeting with former colleagues, friends, family and members of the community is chilling and invites scrutiny. Moreover, the scrutiny will come in the form of interrogating Union representatives about who has served as their escort and identifying to management employees engaging in Union activity. Where an employer reduces the ability of the union to access its employees for representational purposes, the unilateral change is material in nature. The Chronicle's argument here is pernicious. When it imposed in 2014 a requirement that Union representatives sign in at security and be escorted into the building, it defended against the Union's claims that it unilaterally changed terms and conditions of employment by emphasizing that there was no change in access within the facility and the Union representative only had to be escorted into the building and, therefore, it is immaterial. Three years later, the Chronicle claims to have imposed an additional restriction on Union access by requiring an escort throughout the facility. The Chronicle cannot be permitted to avoid its obligations under the Act by meting out unilateral changes incrementally to erode Union access.

*e. The Unilateral Change Was Made without Notice and the Opportunity to Bargain*

It is undisputed that the Chronicle imposed the restrictions on Union access without first providing notice to the Union and the opportunity to bargain. Moreover, the unilateral changes were made while the parties were engaged in overall contract bargaining and, therefore, the Chronicle was obligated to make a proposal to change Union access at bargaining.

Peterson's testimony about instances that Anderson may have violated the policy with respect to checking in at security and receiving a badge is irrelevant to this charge. The Chronicle's concerns about adherence to the policy do not privilege the Chronicle from violating its duty to bargain. The Chronicle could address any such concerns through collective bargaining and making proposals during contract negotiations.

For the foregoing reasons, the Chronicle violated Section 8(a)(5) of the Act by imposing restrictions on Union access.

**B. The Chronicle's December 21, 2017, Letter Independently Violated Section 8(a)(1) of the Act**

An employer violates Section 8(a)(1) by maintaining a work rule that "would reasonably tend to chill employees in the exercise of their Section 7 rights." *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), *enfd. per curiam* 203 F.3d 52 (D.C. Cir. 1999). The Board's framework for analyzing whether an employer rules violate section 8(a)(1) of the Act was overhauled in *The Boeing Company*, 365 NLRB No. 154 (2017). However, the analysis relevant to the instant case, as set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), remains in tact. In Lutheran Heritage, the Board stated:

> [O]ur inquiry into whether the maintenance of a challenged rule is unlawful begins with the issue of whether the rule explicitly restricts activities protected by Section 7. If it does, we will find the rule unlawful. If the rule does not explicitly restrict activity protected by Section 7, the violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.

*Id.* at 646-647. *Boeing* overruled the "reasonably construe" standard but did not overturn the other two means of demonstrating an unlawful rule where (2) the rule was promulgated in response to

union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights. *See Shamrock Foods Co.*, 366 NLRB No. 117 at fn. 8 (2018) (no heckling rule unlawful because promulgated in response to union activity). Here, the access restrictions must be struck down for violating both of the last two prongs of the *Lutheran Heritage* standard.

1. The Chronicle Promulgated a More Restrictive Access Policy in Response to Union Activity

There can be no mistake that the Chronicle's access restrictions came in response to Union activity because the Chronicle has admitted it. The Chronicle specifically so stated in the December 17, 2017, letter itself and Peterson admitted at hearing that the letter was sent in response to the Union representatives attempting to meet with employees in the newsroom and the Union and its members asserting to Peterson that they had the right to do so.

The Chronicle cannot establish that the imposition of the three new restrictions was for a legitimate business concern where, at hearing, the Chronicle disavowed the existence of two of the restrictions and presented no explanation whatsoever as to *why* the false restrictions were put into place much less a showing that the Chronicle was motivated by something other than the Union activity.

Additionally, the Chronicle cannot make a showing of motivation to address a legitimate workplace concern where the parties were in successor contract bargaining. If the Chronicle had a legitimate workplace concern then it was duty-bound to propose a change to Union access at the bargaining table.

Moreover, the imposition and enforcement of a policy that purports to be of general applicability but is only promulgated and enforced as to Union representatives is obviously in response to Union activity and there can be no legitimate business justification. It is undisputed that the Chronicle did not send around its December 17, 2017 letter to anyone other than the Union and it did not enforce any such restrictions on anyone other than the Union.

2. The Chronicle Promulgated and Enforced a Discriminatory Access Policy to Restrict Section 7 Rights

The Chronicle's December 17, 2017, letter purported to apply to all visitors but it was

targeted in its promulgation and enforcement against only Union representatives. The uncontroverted record evidence is that after kicking the Union out of the newsroom in December and issuing the December 17, 2017, restrictions to the Union, the Chronicle continued to allow non-employee visitors to access the newsroom, move unescorted in the facility and speak to employees on "work time." The Chronicle has only applied this rule to restrict Section 7 activity. It is clear that the restrictions were adopted for a discriminatory purpose.

Moreover, the Chronicle's failure to rescind the December 17, 2017, letter to the Union, without explanation, despite its admission at hearing that it falsified its policy with respect to all visitors and more stringently enforced restrictions only as to the Union is a tacit admission of a discriminatory purpose.

### C. A Notice Reading Is Appropriate

The traditional notice posting will not sufficiently remedy the Chronicle's unlawful conduct and a notice reading should be ordered in front of the Union and a Board Agent. The public reading of a notice has been recognized as an "effective but moderate way to let in a warming wind of information and, more important, reassurance." *United States Service Industries*, 319 NLRB 231, 232 (1995) *quoting J.P. Stevens & Co. v. NLRB*, 417 F.2d 533, 540 (5th Cir. 1969). The Chronicle made a spectacle of kicking the Union out of the newsroom and has created an atmosphere of fear and intimidation and impression of surveillance of Union activities with its discriminatory policy. Further, the Chronicle took these actions in during successor bargaining heightening the severity of the violations. To remediate fully these blatant violations a notice reading is appropriate.

## IV. CONCLUSION

For the foregoing reasons, the Chronicle violated Section 8(a)(5) and (1) of the Act by promulgating and maintaining the three restrictions on Union access imposed by its December 17, 2017, letter to the Union. The Charging Party respectfully requests that an Order be issued requiring the Chronicle to rescind its access restrictions and post, distribute and read a notice to employees affirming the Union's access rights and that the Chronicle will not interfere with those rights.

Dated: September 4, 2018

BEESON, TAYER & BODINE, APC

By: */s/ Susan K. Garea*
SUSAN K. GAREA
Attorneys for Charging Party
PACIFIC MEDIA WORKERS GUILD

**PROOF OF SERVICE**

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to this action. My business address is Beeson, Tayer & Bodine, 483 Ninth Street, Suite 200, Oakland, California 94607. On September 4, 2018, I served the following document:

**CHARGING PARTY'S POST-HEARING BRIEF TO THE ADMINISRATIVE LAW JUDGE**

☒ **By Electronic Service** to the parties in this action. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Jason Wong
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1735

Email: jason.wong@nlrb.gov

Mark W. Batten
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One International Place
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I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on September 4, 2018.

*/s/ Susan K. Garea*
Susan K. Garea